

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Published June 24, 2011]

NOTICE OF PROPOSED RULEMAKING

Aspen, Meadow and Wet Area Restoration, 2011

Title 14 of the California Code of Regulations (14 CCR):

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend

§ 913.4, 933.4, 953.4 Special Prescriptions

§ 939.15 Protection of Wildlife Habitat

§ 959.15 Protection of Wildlife Habitat

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 A.M., on Wednesday, August 10, 2011, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., Monday, August 8, 2011. The Board will consider only written

comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: George Gentry
Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 4551, 4551.5 and 21082, Public Resources Code.
Reference: Sections 4511, 4512, 4513, 4521.3, 4551, 4551.5, 4552, 4553, 4554, 4554.5, 4581, 4582 and 21080.5, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation develops a new silvicultural “Special Prescription” that states the requirements for projects that harvest, remove or otherwise treat commercial conifer trees in aspen stands, meadow or wet areas for purposes of restoring habitat, ecological and range values. The proposal would delete the existing sections in 14 CCR 939.15 and 959.15 (b), Protection of Wildlife Habitat. The regulation eliminates regulatory constraints associated with even-age silvicultural rules allowing a wider range of projects designs. The new rule requires clear information about the proposed restoration activity, establishes

postharvest measures of success, and requires post harvest monitoring to ensure successful accomplishment of the project.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is aware of potential minor cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. New disclosure requirements (for large projects greater than 20 acres) including condition assessments, limiting factors and measures of success proposed by this regulation are currently not explicitly required for aspen, meadow, and wet area restoration projects. These additional disclosure requirements could add costs to landowners who are developing projects over 20 acres in size.
- Effect on small business: Minor. The Board has determined that the proposed amendments have additional disclosure requirements that could add costs to landowners who are developing projects over 20 acres in size.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.

- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: George Gentry
Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Gentry is not available, Mr. Eric Huff, Assistant Executive Officer, at the above address and phone (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

/s/ Christopher Zimny

Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Aspen, Meadow and Wet Area Restoration, 2011

[Published June 24, 2011]

Title 14 of the California Code of Regulations (14 CCR),

Amend

§ 913.4, 933.4, 953.4	Special Prescriptions
§ 939.15	Protection of Wildlife Habitat
§ 959.15	Protection of Wildlife Habitat

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend Forest Practice Rules (FPR) Title 14, Chapter 4, Subchapter 4, 5, and 6, Article 3 and 9, in the above listed sections.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Aspen (*Populus tremuloides*), a native tree species found in the northern and southern Sierra Nevada Mountains, has well documented regeneration problems. These regeneration problems are highly related to loss of natural disturbance, such as wildfire, and other human caused factors. In the absence of fire, conifer trees will encroach on the aspen stands, shading the aspen trees and inhibiting regeneration of root clones.

Forest practices which help aspen restoration are one step towards restoring this diverse habitat in California. Thinning conifers out and away from aspen will help restore this important and limited forest component. Similar restoration goals can be achieved when conifers are removed from meadows and wet area.



Post harvest conditions where conifers were removed to restore aspen and meadow habitats on Fruit Growers Supply Co. lands in Lassen County.

In 2006, the Board amended the Forest Practice Rules (FPRs) to facilitate restoring and regenerating aspen stands, meadows, and wet areas on private

lands. The rules were amended to allow for removal of conifers trees in aspen stands, meadows and wet areas by clearcutting for the purpose of habitat improvement. The amendments helped reduce the cost of preparing a Timber Harvest Plan because plan preparers no longer had to develop costly “Alternative Prescriptions ” pursuant to 14 CRR 933.6 and 953.6 which involve substantial justifications as part of the THP review process.

In 2009, stakeholders who had been implementing the regulation passed in 2006 requested the Board to evaluate CAL FIRE’s interpretation of this regulation. CAL FIRE had been questioning whether there was a size limit for aspen, meadow and wet area restoration projects because the regulation refers to “clearcutting” which is an evenaged silvicultural system defined in the FPRs. Evenaged systems have limitations that include:

- Harvest area size maximum of 20 to 40 acres in size per 14 CCR § 933.1 [953.1] (a) (2); and
- Harvest of stands adjacent to a previously harvested evenaged stand can not occur for a 5 year period or until the adjacent stand has trees five feet tall or five years of age per 14 CCR § 933.1 [953.1] (a) (4)(A).

Stakeholders asserted the limitation on opening size prohibits otherwise appropriate restoration actions greater than 20-40 acres in size without the use of an “Alternative Prescriptions” per 14 CCR § 897 (e)-(h) and 913.6 [933.6, 953.6]. Evenaged restrictions associated with the clearcutting prescription further have the consequence of delaying/deferring evenaged harvesting of commercial conifer forest stands adjacent to the aspen, meadow or wet area restoration area. These ambiguous limitations could result in unnecessary unintended consequences to completing restoration projects and adjacent forest management projects.

The Board’s Forest Practice Committee (FPC) began evaluating CAL FIRE’s interpretation and considering the need for regulatory amendments in October 2009. As part of the review, stakeholders provided testimony on issue to the FPC through December 2009, and the Board held a field trip on October 28, 2010, to review recent aspen restoration projects in Lassen County.

The review revealed the regulation adopted for restoration in 2006 was intended to relieve post harvest stocking standard requirements but not necessarily other evenaged size opening requirements which were being questioned by CAL FIRE. The administrative record for the 2006 action does not address the Board’s intent on maximum opening sizes, but made a finding that environmental impacts of the rule are not significant because (among other things) all other FPRs [including evenaged harvesting limitations] are in place.

During the 2009/2010 rule review, questions were also raised by stakeholders regarding the applicability of evenaged “adjacency” requirements in 14 CCR §

933.1 [953.1] (a) (4) (A). While the regulation in 14 CCR § 939.15[959.15] waives the “stocking” requirements for entry into an adjacent/contiguous stand, it is silent in regard to the waiver of “dominate and co-dominate” conifer tree five years/five feet tall requirement for re-entry. There is no specific rule language addressing when a person can enter an adjacent aspen, meadow or wet area restoration project.

Regulatory agencies, including DFG and CAL FIRE, reported the aspen restoration regulation is being reviewed and used appropriately in the field. Agencies reported that they support the concept of appropriate aspen restoration projects that exceed the 20-40 acre limitation. DFG provided information on the project sizes that have been approved in DFG Northern Region 1 and this documentation indicates that about 1/3 of the projects (4 of 12) are greater than 40 acres and have been approved in the past with appropriate pre-project evaluation by their agency. All of these were meadow restoration projects and likely included the entire meadow area. Only 3 projects were reported as aspen restoration projects and none of these exceeded 16 acres.

In summary the 2009/10 review found the basic issues to address are:

1. Should there be a size/acreage limitation to the restoration projects?
2. Should there be a waiver of the “adjacency” limitation in 14 CCR § 933.1 [953.1] (a) (4) (A) to provide for contiguous restoration units or evenaged commercial conifer forest harvest adjacent to restoration projects that would together exceed 20-40 acres?
3. Are past projects approved under this section of the rules meeting the intent of the Board for aspen/meadow restoration?
4. What are the environmental impacts of previous projects and what would the cumulative environmental impacts be if the acreage and adjacency limitations are eliminated/reduced?

The 2009/10 review of these issues resulted in several findings.

- Waiving restocking requirements are appropriate and legal because aspen, meadow, wet area projects are not designed for commercial timber production and land being harvested is not normally bearing timber.
- Loss of timber productivity by waiving stocking requirements in aspen, meadow and wet areas must be weighed against the value obtained from the restoration action. Actions removing commercial species and not resulting in contributing to aspen, meadow, or wet area restoration are not appropriate. Ineffective restoration actions can adversely affect timber productivity and do not meet the maximum sustainable production goals of the Forest Practice Rules.
- Use of “special prescriptions”, as defined in the FPRs, should be an alternative considered to address aspen restoration harvesting actions. This

prescription will clarify the silvicultural standards intended to be met as part of restoration projects.

- Clarity is needed in rule regarding the Board's intent on clearcutting adjacent to aspen or meadow restoration areas.
- The general alternatives pathway in 14 CCR § 897 (e)-(h) and 913.6 [933.6, 953.6] for expanding a project size is an appropriate way to address projects which are larger than the evenaged silviculture limit. This would make the regulatory requirements clear, provide the appropriate CEQA disclosures upfront, and improve harvest plan processing for applicants. However, developing and processing "alternative prescriptions" is time consuming and expensive for agencies and landowners.
- Cumulative adverse impacts are not likely to result from waiving the clearcutting size and adjacency limitations. This finding is based on field review of projects and testimony regarding excellent oversight by agencies of proposed restoration projects, and great diligence by RPFs in conservative planning and operations on the restoration sites to ensure avoidance of adverse environmental impacts.
- There is strong multi-stakeholder and interagency cooperation in addressing restoration needs. DFG has been closely engaged in project development and implementation. It was noted that participation of the Lahontan Regional Water Quality Control Board was desirable for project design, and ensuring that projects meet legal and permitting requirements.
- Federal aspen restoration projects in Lassen County adjacent to private land restoration projects have monitored and assessed restoration accomplishments and environmental effects. Monitor results has shown these projects contributed to aspen, meadow and wet area restoration. The projects incorporated federally designed best management practices (BMPs), many of which are similarly contained in the FPRs. Monitoring of these projects found significant adverse environmental impacts were avoided.
- Each site has specific and unique environmental values and beneficial uses of water that need to be identified and addressed for protection. Project specific BMPs are necessary to avoid potential adverse environmental impacts and protect the unique environmental values and beneficial uses of water.
- Most aspen and meadow restoration projects reviewed by the Board were generally small, although a 200 acre project was completed on USFS lands. Furthermore, the distribution of aspen is often very small compared to the acreage of commercial forest lands. This finding contributes to the determination of no individual or cumulative significant adverse environmental impacts will likely result from projects.

- Monitoring and post project determination of “success” in achieving aspen restoration is necessary to assure restoration goals are met and no significant adverse environmental impacts are occurring. The time lag between project completion and aspen sprouting response or other measures of success can be lengthy, and results may not be seen during the three-year time. Therefore the regulations propose to have agencies implement the monitoring, as it would not be practical to have the project proponent conduct the monitoring.

- Restoration projects which remove conifer forests can conflict with Maximum Sustainable Production and restocking requirements if projects do not result in meeting restoration goals. However, most aspen and meadow restoration projects are generally small, and the distribution of aspen is often very small compared to the acreage of commercial forest lands. Given this, removal of commercial trees to facilitate restoration, with no intended restocking, will not have a significant impact on maximum sustainable production of timber.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed regulation develops a new silvicultural “Special Prescription” that states the requirements for projects that harvest, remove or otherwise treat commercial conifer trees in aspen stands, meadow or wet areas for purposes of restoring habitat, ecological and range values. The proposal would delete the existing sections in 14 CCR 939.15 and 959.15 (b), Protection of Wildlife Habitat. The regulation eliminates regulatory constraints associated with even-age silvicultural rules allowing a wider range of projects designs. The new rule requires clear information about the proposed restoration activity, establishes postharvest measures of success, and requires post harvest monitoring to ensure successful accomplishment of the project.

§ 913.4 [933.4, 953.4], subsection (e) establishes a new silvicultural rule and prescription. This allows CAL FIRE, other public agencies and the general public to have a clear description of the proposed activity and measures of successful implementation. It eliminates ambiguity on which silvicultural activities are intended for the project and eliminates the ambiguous term “harvesting” in the existing rule.

§ 913.4 [933.4, 953.4], subsection (e) (1),(2) and (3) disclosure information regarding aspen, meadow, or wet area restoration projects. The additional mapping and description the extent of the area will ensure adequate descriptive detail of the proposal and provides a basis for agency evaluation of the project. These subsections replace the need for mandatory consultation with agency personnel from the California Department of Fish and Game and Regional Water Quality Control.

§ 913.4 [933.4, 953.4], subsection (e) (4) (A) and (B) require an assessment of the condition of aspen in the project and landscape area. The assessment includes the extent, vegetation characteristics and significance of aspen in the project area and the relationship of the project area to the landscape setting or watershed. This will ensure the project is commensurate to the historical presence of the species and proposed treatments are appropriate to stand conditions.

§ 913.4 [933.4, 953.4], subsection (e) (5) establishes the development of performance based measures of success for projects which are to be developed by the project's RPF. These measures are physical characteristics that demonstrate accomplishment of the restoration project goals. Subsection (A) requires information on factors putting the aspen, meadow, or wet areas at risk and project actions which address these factors. Disclosure and actions to address factors affecting the functionality and ecological integrity of the project area are needed to demonstrate a linkage between project needs and actions. It also provides disclosure to the review agencies and to the public that the actions will contribute to restoration and not result in potential significant adverse environmental effects or loss of timberland productivity. It is not the intent or expectation of this subsection or the entire regulation that actions taken using this regulation will fully restore these settings. The subsection also effectively shifts responsibility for development of appropriate restoration and protection standards to the plan proponent instead of with CAL FIRE or other agencies.

§ 913.4 [933.4, 953.4], subsection (e) (6) establishes an option for RPFs preparing small projects to consult with appropriate governmental agency personnel instead of developing the condition assessments and measures of success required for larger projects in § 913.4 [933.4, 953.4], subsection (e) (4) and 5. The project size threshold is 20 acres or less. This is based on the lower limits of opening sizes permitted for the clearcutting silvicultural prescription in the FPRs. Information has not been disclosed nor has the Board observed significant adverse impacts to the environment resulting from the use of aspen/meadow restoration prescriptions for projects of this size.

§ 913.4 [933.4, 953.4], subsection (e) (7) requires agency monitoring of implemented projects. Periodic reports from the appropriate state agency on compliance of rule requirements with focus on how measures of success were accomplished allow agencies and the Board to evaluate the effectiveness of the rule in accomplishing restoration goals, determine follow-up adaptive management needs, and assess any unintended environmental consequences.

§ 913.4 [933.4, 953.4], subsection (e) (8)(A) and (B) establish compliance exemptions from standard for FPRs. This is needed because restoration projects may need to be specifically designed to standards that do not need current FPRs. It removes clearcut and other even age silviculture restrictions that are not consistent with the restoration project. This eliminates any artificial

restrictions on project design such as opening size, adjacency limitations, or conifer re-stocking standards.

§ 913.4 [933.4, 953.4], subsection (e) (8) (C) makes clear that an approved project meets the Maximum Sustained Productivity (MSP) requirements of the Forest Practice Rules. MSP rules required commercial timber harvesting to be restocked and managed to grow timber. Since the actions under restoration projects do not restock or grow commercial timber in accordance with conventional MSP rules, an explicit statement is made that restoration projects under this subsection are consistent with underlying MSP timber productivity statutes in PRC 4513 and 4561.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the regulation proposed. These include the following:

Alternative #1 - Uses the existing regulatory “alternative practices” pathway in 14 CCR § 897 (e) and 936.6 [956.6] to conduct aspen restoration activities under 14 CCR § 939.15 [959.15] when the harvest areas will exceed the size or adjacency limitations. This alternative was rejected because it has a necessary economic impact related to additional RPF analysis time and five pages of THP documentation.

Alternative #2 – Modifies the regulation under 14 CCR § 939.15 [959.15] to remove the word “clearcutting”. This has the effect of eliminating the silvicultural limitations found in 14 CCR § 933.1 [953.1] (a) (4) (A) related to maximum restoration project size, and eliminates the silvicultural limitations on entry into an adjacent stand (either for commercial timber harvesting or for additional aspen restoration or other meadow restoration work). This alternative was rejected because it did not remedy the ambiguities of silviculture prescription standards created by retaining the term “harvesting” in the regulation.

Alternative #3– Uses Alternative # 2 and includes an acreage limitation on restoration project size. The alternative would address the issue of limitation on size of area that can be restored in one entry, but provides a maximum acreage opening to address significant adverse environmental impacts. This alternative was rejected because it did not remedy the ambiguities of silviculture prescription standards created by retaining the term “harvesting” in the regulation.

Alternative #4A– This alternative uses the proposed regulation and includes the project proponent required 1) monitoring of measures of success and 2) adaptive management actions if the measures of success were not accomplished. This alternative was rejected because measuring the success of the project may be beyond the THP permit application time period (three years). Also, monitoring

and additional actions to achieve goals and measures of success could be significant increases in cost to landowners.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered potential significant adverse environmental impacts from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process. The Board found the regulation would not result in any potential individual or cumulative significant adverse environmental effects. The determination was based on 1) all FPRs pertaining to any timber harvesting activity is applicable, 2) the FPRS have been determined by the Board to result in no potential significant adverse environmental impact; 3) the project does not alter site specific review of environmental impacts as required by the FPRs; 4) disclosure requirements allow reviewing agencies and the public to adequately assess project impacts, and 5) consultation is required with appropriate agency personnel from the California Department of Fish and Game and Regional Water Quality Control Board when smaller projects (less than 20 acres in size) are proposed.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board estimated the regulation should not have any adverse economic impact on any business, or only minor economic impacts. The regulation is intended to provide regulatory relief to those submitting Timber Harvest Plans that involve restoring aspen habitats. Disclosure requirements including condition assessments, limiting factors and measures of success proposed by this regulation are currently not explicitly required for aspen, meadow, and wet area restoration projects. These additional disclosure requirements could add costs to landowners who are developing projects over 20 acres in size.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has considered alternatives to improve the economic efficiency of the regulation to make it more cost effective for small businesses to use. These alternatives included eliminating all project disclosure requirements from the rule proposal, eliminating the evenage the silviculture project size restrictions, and clarifying that alternative prescriptions would not need to be filed. This alternative was rejected because it did not remedy the ambiguities of silviculture prescription standards created by retaining the term “harvesting” in the regulation. It also would not address the need for clear disclosure of projects for

agencies and the public or provide a clear linkage between the condition assessment and the proposed restoration actions.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Board of Forestry and Fire Protection staff report December 1, 2010.
2. Department of Fish and Game letter, May 3, 2011.
3. Fruit Growers Supply Co. letter from Dean Loftus, April 19, 2011.
4. Lahontan Regional Water Quality Control Board, letter from Doug Cushman, May 2, 2011.
5. Aspen Enhancement Supporting Information, Department of Fish and Game, Jennifer Carlson, March 2010.
6. Aspen- Meadow Enhancement Project Summary, Department of Fish and Game, October 2009.
7. Bogard THP field tour stop information, October 2010.
8. McKenzie Enhancement Aspen Project, United States Forest Service, Eagle Lake Ranger District, October 2010.
9. Protocols: Aspen Delineation Project, Aspen Location and Condition Data Form, 2002.
10. United States Forest Service, High Meadow Restoration Project, May 2009.
11. Jones, Burton, Tate. September 2005. Effectiveness Monitoring of Aspen Regeneration on Managed Rangeland. United States Forest Service.
12. East McCloud Aspen Release Project Preliminary Environmental Assessment, May 2006, United States Forest Service.
13. Morelli, M. Lyn, T. September 2009 .The Status of Quaking Aspen (*Populus tremuloides*) in the Sierra Nevada . Pacific Southwest Research Station, USDA Forest Service.

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of
Regulations.

All other text is existing rule language.

1 **Aspen, Meadow and Wet Area Restoration, 2011**

2 **[45 day Notice Published June 24, 2011]**

3 **Title 14 of the California Code of Regulations (14 CCR):**

4
5 **Amend**

6 § 913.4, 933.4, 953.4 Special Prescriptions

7 § 939.15 Protection of Wildlife Habitat

8 § 959.15 Protection of Wildlife Habitat

9
10 **Amend § 913.4 [933.4, 953.4]. Special Prescriptions.**

11 ******* (e) Aspen, meadow and wet area restoration.** All trees within aspen stands (defined
12 as a location with the presence of living aspen (Populus tremuloides), meadows and wet areas
13 may be harvested or otherwise treated in order to restore, retain, or enhance these areas for
14 ecological or range values. A primary goal of aspen restoration projects is the successful
15 regeneration of aspen and recruitment into larger size classes. Projects using this prescription
16 shall be designed to balance the protection and regeneration of aspen stands, meadows, and
17 wet area habitats in California's forest ecosystems with the other goals of forest management as
18 specified in 14 CCR § 897 and meet the following requirement:.

19 **(1) The RPF shall state in the plan each project type(s) that is being proposed. (aspen,**
20 meadow, and /or wet area restoration).

21 **(2) Each project type shall be shown on the plan map, consistent with 14 CCR § 1034**
22 (x), and at a scale that shows the locations of planned operations.

23 **(3) The RPF shall describe the extent of the area proposed for harvesting or treatment**
24 and the types of harvesting or treatments.

25 **(4) The RPF shall describe the condition of aspen stands, meadows and wet areas in**
 the project area.

1 (A) For aspen stands, the condition description shall include, but is not limited to,
2 the determination of whether the aspen stands are upland aspen stands mixed with conifer or
3 riparian/wet meadow aspen stands; spatial extent, species composition, and stand structure
4 (including overstory/understory coverage) of the project area; and the relationship of the project
5 area to other known aspen stands in the planning watershed or biological assessment area.

6 (B) For meadows and wet areas, the conditions description shall include; spatial
7 extent, species composition, and stand structure (including overstory/understory coverage) of
8 the project area; relevant watercourse condition factors stated in Technical Rule Addendum #2;
9 and other factors indicative of meadow or wet area geomorphic and hydrological functions .

10 (5) The RPF shall state the project goals and the measures of success for the proposed
11 aspen, meadow, or wet area restoration project. For purposes of this subsection, measures of
12 success means criteria related to a physical condition that can be measured using conventional
13 forestry equipment or readily available technology to indicate the level of accomplishment of the
14 project goals.

15 (A) Aspen, meadow or wet area project goals and measures of success shall be
16 based on the condition assessment required in 14 CCR § 913.4 [933.4, 953.4], subsection
17 (e)(4) and identification of problematic aspen, meadow or wet area conditions and their
18 agents/causes. Information shall include a description of factors that may be putting aspen
19 stands, meadow, or wet areas at risk, and presence of any unique physical conditions. Projects
20 shall be designed to contribute to rectifying factors that are limiting restoration, to the extent
21 feasible.

22 (6) For projects 20 acres or less the RPF has the option to not include the requirements
23 of 14 CCR § 913.4 [933.4, 953.4], subsections (e) (4) and (5) if the RPF consults with DFG
24 prior to plan submittal and, if wet areas are proposed, the RPF shall also consult with the
25 appropriate RWQCB in those locations where the applicable basin plan identifies wet areas as a
beneficial use. The results of the consultation(s) shall be included in the plan.

1 **(7)** The Department and other appropriate agency shall review post harvest field
2 conditions of the portions of plans using the aspen, meadow and wet area restoration
3 silvicultural prescription and prepare a monitoring report every five years for the Board. The
4 monitoring report shall summarize information on use of the prescription including (i) the level of
5 achievement of the measures of success as stated in plan per 14 CCR § 913.4 [933.4, 953.4],
6 subsection (e)(5), (ii) any post harvest adverse environmental impacts resulting from use of the
7 prescription, (iii) any regulatory compliance issues, and (iv) any other significant findings
8 resulting from the review. The review shall include photo point records.

9 **(8)** Exemptions from other FPRs:

10 **(A)** Silvicultural standards for opening size, adjacency requirements, or conifer
11 stocking standards in 14 CCR §§ 913.1 – 913.3 [933.1-933.3, 953.1-953.3]; 913.6 [933.6,
12 953.6]; and 913.8 do not apply to use of this prescription.

13 **(B)** Minimum resource conservation standards in 14 CCR § 912.7 [932.7, 952.7] do
14 not apply to use of this prescription.

15 **(C)** For purposes of this prescription, timberland productivity and MSP requirements
16 as stated in 14 CCR §§ 913.10 [933.10, 953.10]; 913.11 [933.11, 953.11], subsection (a), and
17 1034 (m) are met by implementing actions that contribute to attaining the measures of success
18 approved by the Department for this prescription.

19
20 Note: Authority cited: Section 4551, 4553 and 4561, Public Resources Code. Reference:
21 Sections 4512, 4551.5, 4582 and 4582.5, Public Resources Code.
22
23
24
25

1 **Amend § 939.15. Protection of Wildlife Habitat.**

2 ~~All trees within aspen stands (defined as a location with the presence of living aspen (Populus~~
3 ~~tremuloides)), meadows and wet areas may be clearcut and these areas exempted from~~
4 ~~stocking provisions in order to restore, retain, or enhance these areas for ecological or range~~
5 ~~values, and to balance the protection and regeneration of aspen stands, meadows and wet area~~
6 ~~habitats in California's forest ecosystems with the other goals of forest management as~~
7 ~~specified in 14 CCR § 897. These areas shall be shown on the plan map and the plan shall~~
8 ~~describe the extent of the area proposed for clearcutting. The RPF shall consult with DFG prior~~
9 ~~to plan submittal. If wet areas are proposed for clearcutting, the RPF shall also consult with the~~
10 ~~appropriate RWQCB in those locations where the applicable basin plan identifies wet areas as a~~
11 ~~beneficial use.~~

12
13
14 Note: Authority cited: Section 4551, Public Resources Code. Reference: Sections 4512,
15 4551.5, 4561 and 4561.1, Public Resources Code.

16 **Amend § 959.15. Protection of Wildlife Habitat.**

17 (a) Where present at time of timber harvest 400 square feet basal area of oak per 40 acres
18 should be retained and protected, giving preference to deciduous oaks. Oaks should be
19 retained on areas designated by the Department of Fish and Game as deer migration corridors,
20 holding areas, or key ranges when consistent with good forestry practices.

21 ~~(b) All trees within aspen stands (defined as a location with the presence of living aspen~~
22 ~~(Populus tremuloides)), meadows and wet areas may be clearcut and these areas exempted~~
23 ~~from the stocking provisions of the rules in order to restore, retain, or enhance these areas for~~
24 ~~ecological or range values, and to balance the protection and regeneration of aspen stands,~~
25 ~~meadows and wet area habitats in California's forest ecosystems with the other goals of forest~~

management as specified in 14 CCR § 897. These areas shall be shown on the plan map and the plan shall describe the extent of the area proposed for clearcutting. The RPF shall consult with DFG prior to plan submittal. If wet areas are proposed for clearcutting, the RPF shall also consult with the appropriate RWQCB in those locations where the applicable basin plan identifies wet areas as a beneficial use.

Note: Authority cited: Sections 4551 and 4561, Public Resources Code. Reference: Sections 4551, 4561 and 4561.1, Public Resources Code.